



Department of Energy
Carlsbad Field Office
P. O. Box 3090
Carlsbad, New Mexico 88221

JUL 08 2004



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Mr. James Bearzi, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505

Subject: Supplemental RCRA Permit Fees, WIPP Hazardous Waste Facility Permit,
EPA I.D. Number NM4890139088

Dear Mr. Bearzi:

The Permittees have reviewed the New Mexico Environment Department's (NMED's) March 1, 2004, request for supplemental Resource Conservation and Recovery Act (RCRA) permit fees so that NMED can adequately and expeditiously act on permit related issues concerning the Waste Isolation Pilot Plant (WIPP).

It remains the policy of the Department of Energy (DOE) that supplemental fees are to be used only for those activities directly related to expedited consideration and decisions regarding permit modifications, audit reports, and other actions requested by the Permittees. As we discussed earlier this year with Ms. Martin and Secretary Curry, WIPP's immediate priorities, in addition to clearing the backlog of audit reports, are:

- Receipt of the draft permit for the Class 3 Permit Modification Request (PMR) for Construction and Use of Hazardous Waste Disposal Units submitted to the New Mexico Environment Department (NMED) on May 15, 2003;
- Receipt of the draft permit for Class 3 Remote-Handled Waste PMR submitted to the NMED on June 28, 2002; and,
- Receipt of the draft permit for the Class 3 Section 311 PMR submitted to the NMED on January 9, 2004.

Regarding the supplemental fees NMED has requested, we need to understand how the fees relate to the expedited consideration of these immediate priorities and other actions requested by the Permittees. As you are aware, the Energy and Water Development Appropriations Act for Fiscal Year 2004 directs DOE to provide New Mexico with \$1 million for regulatory and technical assistance to modify the permit to comply with Section 311 of the Appropriations Act. Please identify which items in the request for supplemental fees relate to modifications concerning Section 311, as the use of these particular funds is limited to processing of this modification.



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We also have some questions regarding your request:

1. On November 26, 2002, NMED stated that it had an unexpended balance of \$715,369 from supplemental fees previously provided by the Permittees, and it requested an addition \$506,056. The Permittees provided this additional amount on December 19, 2002. NMED's recent request predicts that it will have an unexpected balance of \$291,713 on June 30, 2004. Please provide the Permittees with an accounting of how the \$929,712 was or will be spent during the period December 2002 through June 2004. In a meeting on March 17, 2004, with Secretary Curry, Paul Detwiler and Mark Turnbough, Rick Martinez explained that procedures had been put in place to track the expenditure of supplemental fees. An accounting of the expenditures for this period, in particular the actual amounts expended on audits and operating expenses, will expedite our consideration of NMED's request for 2004.
2. The request includes funds for seven (7) full-time professional staff and administrative support. Please identify these positions and describe their duties.
3. The request also includes funds for legal assistance. What legal services would be procured with these funds?
4. Does the invoice need to be revised in light of the recent agreement to re-establish the NMED WIPP Office pursuant to the Agreement in Principle?

We look forward to your responses and to working with you on your consideration of the permit matters pending before NMED. If you have any questions, please contact me at (505) 234-7300 or Mr. Steve Warren at (505) 234-7400.

Sincerely,



R. Paul Detwiler
Acting Manager